

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JALEN B.,

Claimant,

and

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH Case No. 2011020746

DECISION

David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, heard this matter at the South Central Los Angeles Regional Center, in Los Angeles, on July 12 2011.

Jalen B. (Claimant) was represented by his mother, D.W.¹

Johanna Arias-Bhatia, Fair Hearing/Government Affairs Manager, represented South Central Los Angeles Regional Center (SCLARC or the service agency.)

Oral and documentary evidence was received and argument made. The record remained open for SCLARC to submit an additional document, a prior Order of Dismissal, which was received on July 18, 2011, and was marked Exhibit 13 and received in evidence. The record was closed and the case was submitted for decision on July 18, 2011.

ISSUE

The parties agreed that the following issue is to be decided by the ALJ:

¹ Claimant and his family are referred to by their initials or family titles to protect their confidentiality.

Should the Service Agency reinstate funding for Claimant to attend the Acacia Learning Center?

FACTUAL FINDINGS

1. Claimant is a 12-year-old boy (date of birth, December 17, 1998) who is a consumer of the Service Agency by reason of his diagnosis of autism. He and his older sister live with their mother. Among the services that SCLARC funded for Claimant in the past was attendance at the Acacia Learning Center. That funding was discontinued in January 2011. In January 2011, Claimant's mother requested that the services be reinstated.

2. On February 8, 2011, the Service Agency sent a Notice of Proposed Action (Exhibit 1) that informed Claimant that funding for the Acacia Learning Center was denied.

3. Claimant's mother filed a fair hearing request dated March 1, 2011. (Exhibit 2.)

4. The Service Agency contends that Acacia Learning Center (Acacia) is a social recreational service or a nonmedical therapy that, pursuant to Welfare and Institutions Code² section 4648.5, effective July 28, 2009, can not be funded. The pertinent statutory language is found below in Legal Conclusion 3.

5. Claimant began attending Acacia either in 2003 (per Exhibit B, a letter from the program manager at Acacia) or in 2006 (per Exhibit 4, a Service Agency interdisciplinary note). This interdisciplinary note was prepared by Pamela Colvin-Lee, the Autism Community Liason at SCLARC, and is a summary and analysis of the service, and indicates that the purpose was to address social deficits and provide opportunities for social interaction with peers. However, the earliest Individualized Program Plan (IPP) in evidence, dated December 11, 2008 (Exhibit 6), indicates that "Acacia provides behavior and socialization training," and that the desired outcome, as stated by the mother, is for Claimant to "continue to develop social and cognitive skills."

6. SCLARC proposed to terminate the service in an earlier Notice of Proposed Action Letter dated September 15, 2009 (Exhibit 9), also based on the language of section 4648.5. Claimant's mother requested a fair hearing and the services continued as aid paid pending the outcome of the hearing. For reasons not set forth in the record, the hearing did not take place until January 2011. Claimant's mother testified she did not receive notice of the hearing and did not attend, and explained at the present hearing that she had forgotten about her hearing request because it had been filed more than one year earlier. SCLARC submitted evidence that, in December 2010, it had sent Claimant's mother a package of evidence for the January 2011 hearing that included the notice of hearing (Exhibit 11).

² All further statutory references are to the Welfare and Institutions Code.

Because there was no one attending the January 2011 hearing for Claimant, the matter was dismissed (see Order, Exhibit 14), and funding for Acacia was discontinued.

7. Another IPP in evidence is dated January 22, 2010 (Exhibit 13). It notes that Claimant has challenging behaviors including being resistive and having tantrums. The behavior is controllable. Claimant “continues to be confrontational to those he feels has [sic] done wrong to someone else.” Claimant’s mother wanted him to continue to attend Acacia “so that he can continue to develop social and cognitive skills.”

8. The last IPP in evidence is dated December 23, 2010 (Exhibit 5). It notes that Claimant is taking a behavioral skills class at school as part of his special education services. Claimant’s mother wanted him to continue to attend Acacia “so that he can continue to develop social and cognitive skills.” The issue was then subject to the pending fair hearing process, which was explained to his mother.

9. Claimant’s service coordinator at SCLARC is Patrick Scott, who testified that he receives periodic reports from Acacia concerning the services provided for Claimant and his progress. None of these reports were submitted for review at the hearing or to Ms. Colvin-Lee when she reviewed the situation in December 2010 and concluded that the Acacia program was for socialization and that funding should be discontinued under the new code section. Mr. Scott testified that Acacia is a behavioral program for consumers with behavioral challenges.

10. Darius Crockett, the Acacia program manager, wrote a letter dated June 22, 2011 (Exhibit B), at the request of Claimant’s mother. After noting the challenging behavior that Claimant engaged in at the outset, Mr. Crockett notes improvements, such as: Claimant completes his homework with staff assistance; Claimant was able to integrate socially with peers and was often a leader in a groups setting; when grouped with others on the same functional level, Claimant participated in table games, arts and crafts and exercise activities. Claimant continues to have issues with excessive talking and interrupting others, but he has become less physical and has sought staff to deal with confrontation, and has become less combative with staff when confronted about his inappropriate behaviors. Claimant has learned to take directions and receive feedback in a positive manner. “[Claimant] continues to have behavior issues that needs [sic] to be addressed.”

11. The evidence at the hearing does not support the conclusion reached by Ms. Colvin-Lee that Acacia provides solely a social recreation activity to Claimant, as that phrase is used in the code section. The documentation also supports the conclusion that Acacia has provided cognitive and behavioral support for Claimant. SCLARC examined whether Claimant met the exemption stated in subdivision (c) of the code section, and Ms. Colvin-Lee’s analysis was used to conclude that the exemption did not apply. However, the exemption is only relevant if the service at issue is a social recreation activity, which was not established in this case. Nor was it established that Acacia provide a nonmedical therapy.

12. Testimony was received from Claimant's mother in support of the challenges presented by Claimant's disability and his behaviors, as well as the benefits to Claimant of his participation in the Acacia program. She established that the Acacia program has improved Claimant's confidence, self-esteem and behavior. Due to losing her job, she cannot afford to have Claimant attend Acacia without funding from SCLARC.

13. There was no evidence of any other services discussed with Claimant's mother to address the cognitive and behavioral aspects of Claimant's needs as they have been documented in prior IPP's, and as noted in Mr. Crockett's letter.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code §§ 4500 et seq.) A state level fair hearing to determine the rights and obligations of the parties, if any, is referred to as an appeal of the Service Agency's decision. Claimant properly and timely requested a fair hearing and therefore jurisdiction for this case was established. (Factual Findings 1-2.)

2. Where Claimant seeks to establish the propriety of a service not agreed to by the Service Agency, the burden is on the appealing Claimant to demonstrate the Service Agency's decision is incorrect.

3. The Service Agency relies upon the language of a recent statute passed as part of the State's budget process. Section 4648.5 states:

“(a) Notwithstanding any other provision of law or regulations to the contrary, effective July 1, 2009, a regional center's authority to purchase the following services shall be suspended pending implementation of the Individual Choice Budget and certification by the Director of Developmental Services that the Individual Choice Budget has been implemented and will result in state budget savings sufficient to offset the costs of providing the following services:

“(1) Camping services and associated travel expenses.

“(2) Social recreation activities, except for those activities vendored as community-based day programs.

“(3) Educational services for children three to 17, inclusive, years of age.

“(4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.

“(b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.

“(c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer’s developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer’s needs.”

4. It was not established that the services provided to Claimant by Acacia are either the type of social recreational activities or nonmedical therapies for which funding can be suspended under the language of section 4648.5, subdivisions (a)(2) and (a)(4). (Factual Findings 5, 7, 8, 10 and 11.)

5. Under all of the circumstances presented, the Service Agency may not deny funding for Claimant to attend the Acacia Learning Center.

ORDER

Claimant Jalen B.’s appeal of the South Los Angeles Regional Center’s decision to deny funding for him to attend the Acacia Learning Center program is granted. South Los Angeles Regional Center shall grant funding for Claimant to attend the Acacia Learning Center.

IT IS SO ORDERED.

DATED: July 21, 2011

DAVID B. ROSENMAN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code section 4712.5(b)(2). Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.